

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 9851

IN THE MATTER OF:

Served August 18, 2006

Investigation of Unauthorized)	Case No. MP-2004-164
Transfer of Certificate No. 85 and)	
Unauthorized Operations of JIMMIE)	
LEE DAVENPORT and JAMES L. HUGHES)	

This matter is before the Commission on respondents' response to Order No. 9538, served May 11, 2006, directing respondents to produce documents and present vehicles for inspection.

I. BACKGROUND

On April 23, 2004, the Commission received a \$100 check in payment of the 2004 annual fee for V.I.P. Tours, Inc., WMATC No. 85. The check was drawn on the account of "VIP Tours LLC". Commission records identify Jimmie Lee Davenport and James L. Hughes as the sole shareholders and officers of V.I.P. Tours, Inc., and Mr. Hughes as the organizer of V.I.P. Tours, L.L.C.

On August 31, 2004, the Commission obtained records from the Taxpayer Services Division of the Maryland Department of Assessments and Taxation (MDAT), that show both V.I.P. Tours, Inc., and V.I.P. Tours, L.L.C., forfeited their charters on October 7, 2003. Under Maryland law, a corporation ceases to exist upon forfeiture of its charter, and all assets owned by a corporation at the time of forfeiture are transferred by operation of law to the corporation's directors.¹

Under Article XI, Section 11, of the Compact, Commission approval must be obtained to transfer a WMATC Certificate of Authority, and a person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority.

Accordingly, Order No. 8283 gave respondents thirty days to show cause why the Commission should not assess a civil forfeiture and revoke Certificate No. 85 for respondents' knowing and willful violation of Article XI, Section 11, of the Compact. The response deadline was extended twice at respondents' request. Respondents eventually submitted proof of reviving the charter of V.I.P. Tours, Inc.

Under Maryland law, upon revival of a corporate charter: "If otherwise done within the scope of its charter, all contracts or other acts done in the name of the corporation while the charter was void are validated, and the corporation is liable for them."² Order No. 9538 therefore directed respondents to produce any and all

¹ *Cloverfields Improvement Ass'n, Inc., v. Seabreeze Properties, Inc.*, 362 A.2d 675 (Md. Ct. Spec. App. 1976), *aff'd*, 373 A.2d 935 (Md. 1977).

² Md. CORPS. & ASS'NS CODE § 3-512(1).

business records pertaining to the charter forfeiture period to determine whether any operations were conducted during that time and, if so, whether they were conducted in the name of the corporation. Order No. 9538 directed respondents to present their revenue vehicles for inspection, as well. The order further provided that Certificate No. 85 would stand suspended and be subject to revocation without further proceeding upon respondents' failure to timely comply.

II. RESPONSE

Respondents produced a number of business records pertaining to the charter forfeiture period but failed to present their vehicles for inspection, despite ample time to do so.

It is clear from respondents' documents that they conducted operations during the charter forfeiture period, but it is not clear that those operations were conducted in the name of the corporation. Income tax returns show that all revenue and expense arising out of said operations were reported by VIP Tours LLC, not V.I.P. Tours, Inc. Likewise, the bank records produced by respondents are for VIP Tours LLC, not V.I.P. Tours, Inc.

On the other hand, the Commission had on file during the relevant period a WMATC Insurance Endorsement in the name of V.I.P. Tours, Inc. But this appears to be the extent of any evidence tending to establish that operations were conducted in the name of V.I.P. Tours, Inc. In fact, many of the documents are ambiguous, identifying the carrier merely as VIP Tours.

Under the circumstances, we cannot say that respondents have demonstrated by a preponderance of the evidence that the operations conducted while the charter was forfeited were conducted in the corporation's name.

III. FINDINGS

Under the Compact, a person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.³ The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.⁴

"Knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁵ "Willfully" describes conduct marked by careless disregard.⁶ Employee negligence is no defense.⁷

³ Compact, tit. II, art. XIII, § 6(f).

⁴ Compact, tit. II, art. XI, § 10(c).

⁵ *In re V.I.P. Tours, Inc.*, No. MP-01-98, Order No. 6577 (Mar. 20, 2002).

⁶ *Id.*

⁷ *Id.* To hold carriers not liable for violations due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of civil penalties. *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

This is the second time that respondents have violated the Compact by forfeiting the corporate charter of V.I.P. Tours, Inc., and operating under color of Certificate No. 85.⁹ The Commission shall assess a civil forfeiture of \$5,000 for this repeat offense.

The Commission also shall assess a civil forfeiture of \$1,000 for respondents' knowing and willful failure to present any vehicles for inspection.

Finally, in accordance with Order No. 9538, the Commission shall revoke Certificate No. 85 for respondent's willful failure to comply with Order No. 9538.

THEREFORE, IT IS ORDERED:

1. That the Commission hereby assesses a civil forfeiture against respondents Jimmie Lee Davenport and James L. Hughes, jointly and severally, in the amount of \$6,000 for knowingly and willfully violating Article XI, Section 11, of the Compact and Commission Order No. 9538.

2. That respondents Jimmie Lee Davenport and James L. Hughes are hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of six thousand dollars (\$6,000).

3. That Certificate of Authority No. 85 is hereby revoked for respondents' willful failure to comply with Order No. 9538.

4. That within 30 days from the date of this order respondents shall:

- a. remove from their vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding paragraph; and
- c. surrender Certificate No. 85 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

⁹ See Order No. 6577 (assessing forfeiture for unauthorized transfer and operations).